

REMARKS**Claims**

Claims 1 through 57 were originally filed in this Application. Claims 1, 2, 4-9, 46, 47 and 49 have been allowed. Claims 3, 10-45, 48, 50 and 51 -57 are deemed to be withdrawn as being drawn to a non-elected invention or species.

Applicant has retained claim 3 from the non-elected species as claim 3 is dependent on allowed claim 2. Applicant has retained claim 48 from the non-elected species as claim 48 is dependent on allowed claim 47. Claims 10-45 and 50-57 have been cancelled. Thus, claims 1-9 and 46-59 are now pending in this Application.

Restriction Requirement

In the parent Patent Application Serial No.:09/782,849 filed February 13, 2001, the Examiner imposed a restriction requirement under 35 U.S.C. § 121 and determined that the following distinct inventions were present in parent Application Serial No. 09/782,849. The restriction requirement was as follows:

<u>Group</u>	<u>Claims</u>	<u>Classification</u>
I	1-38, 46-50	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+
II	39-45, 51-57	Drawn to a milking flow meter used in conjunction with a milk claw and system, classified in Class 119, subclass 14.15

In imposing the restriction requirements, the Examiner further stated, in part, as follows:

This Application contains claims directed to the following patentably distinct species of the claimed invention: Species I-Fig. 6, Species II-Fig. 7 and 8; Species III-VIII Figs. 9-19, respectively.

Applicants responded to this restriction requirement as follows:

Since there is no clarifying or language is set forth in the Office Action relating to this statement, Applicant is unclear as to whether the Examiner is now imposing a further restriction requirement as to an elected species.

Applicants are concerned that the above statement may have meant to be a possible

further restriction requirement as to an elected species in order to be responsive.

If the Examiner was not imposing a further restriction requirement as to an elected species, then no other action appears to be required on the part of the Applicants.

If the Examiner was imposing a further restriction requirement as to an elected species, Applicants response is as follows.

Subject to the restriction in applications as set forth in the MPEP Section 800 et seq. relating to the imposition of a restriction requirement in an application and Applicants retaining the right that once a claim that is determined to be generic is allowed such that all of the claims drawn to the species which include the limitations of the generic claim would likewise be allowable in view of the allowance of the generic claim as set forth in MPEP Section 806.04(d) and Applicant retaining the rights after an action following election as set forth in MPEP Section 809.02(c), Applicants hereby conditionally elect the Species I-Fig. 6 for prosecution in this Application.

Withdrawn Invention

Group II claims, claims 39-45, 51-57, are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicants do not desire to cancel the claims drawn to the non-elected invention until an allowable claim or claims have been obtained in this Application.

In the Office Action dated September 11, 2003, the Examiner made the following statement concerning the imposition of the restriction requirement, to wit:

1. Claims 39-45, and 51-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.
2. Claims 3, 10-38, 48 and 50 are further withdrawn as being drawn to a nonelected species as the applicant failed to list the claims readable on the elected figure (Fig. 6).

As a result of the above, the restriction requirement was ultimately finally determined to be as follows:

<u>Group</u>	<u>Claims</u>	<u>Classification</u>
I	1, 2, 4-9, 46, 47 and 49	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+
II	39-45, 51-57	Drawn to a milking flow meter used in conjunction with a milk claw and system, classified in Class 119, subclass 14.15
III	3, 10-38, 48 and 50	Drawn to a device and method for measuring fluid flow rate, classified in Class 73, subclass 861+ as non-elected species based on Applicant failure to list the claims readable on the elected figure (Fig. 6)

As such Group II, claims 39-45, drawn to a milking flow meter and Group III, claims 3, 10-38, 48 and 50, drawn to a device and method for measuring fluid flow rate, as non-elected species based on Applicant's failure to list the claims readable on the elected figure (Fig. 6) were withdrawn from further consideration by the Examiner under 37 CFR 1.142(b) as being drawn to a non-elected invention and to a non-elected species in the parent Parent Application Serial No.:09/782,849 filed September 13, 2001.

This Application is now directed to prosecute the invention of Group I, claims 1, 2, 4-9, 46, 47 and 49 drawn to a device and method for measuring fluid flow rate.

Allowable Claims

The Examiner has determined that claims 1, 2, 4-9, 46, 47 and 48 have been allowed.

Allowable Non-elected Species Claims

Claims 3 and 48 have been retained in this Application in that these claims are dependent claims dependent on allowed claims 2 and 47, respectively. As such, claims 3 and 48 are being retained as claims which are being used to vary the scope of an allowed claim. In addition, as provided in MPEP Section 821.02, when an broad or generic claim is allowed, Applicant has the right to conform the claims of a non-elected species to fully embrace an allowed generic claim. For these reason, the Examiner is respectively requested to allow claims 3 and 48 which read on and conform to and include the limitations of an allowable claim deemed generic in addition to the allowed claims set forth above.

Claims Deemed Withdrawn as being Drawn to

Non-elected Inventions and Non-elected Species.

Claims 10-45 and 51-57 have been canceled as being drawn to non-elected invention and/or non-elected species, which cancellation is being made without prejudice to Applicants to

file a Divisional Application(s) covering such non-elected invention and/or non-elected species.

SUMMARY

Claims 1-9 and 46-49 are pending in this Application.

Claims 1, 2, 4-9, 46, 47 and 49 have been allowed. Claims 3 and 48 are verily believed to be allowable for the reasons set forth above. Thus, all of the remaining pending claims 1-9 and 46-49 in this Application are allowable and this Application is now in condition for allowance.

The Examiner is respectfully requested to issue a Notice of Allowability and a formal Notice of Allowance.

Respectfully submitted,



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